

## Surface Transportation Board, DOT

## §1137.1

file an index adjusted for productivity changes. The adjustment will be made by applying the multi-year average annual growth in productivity spread evenly over four quarters, compounded each quarter. Productivity adjustments shall compound in the same manner as rate changes.

(c) The Association of American Railroads must file its calculations with the Board on the fifth day of the last month of the prior quarter (or the closest business day if the fifth is a Saturday, Sunday or holiday). The calculations are to be for the mid-point of the next quarter.

(d) Tariffs containing adjustments under the provisions of this rule may be filed to become effective on not less than ten days notice when the Rail Cost Adjustment Factor adopted by the Board does not differ from that proposed by the Association of American Railroads. When the Rail Cost Adjustment Factor adopted by the Board differs from that proposed by the Association of American Railroads the notice period shall be not less than five days. Reductions to rates published in the initial RCCR tariff may be published on one day's notice during the period between the publication of the tariff and the first day of the calendar quarter for which that tariff applies.

(e) Increases in rates consistent with these standards will not be investigated or suspended by the Board unless the filing results in a double recovery of inflation-based cost increases.

(f) All cost recovery tariffs filed with the Board shall state that they are being filed in conformity with the rules in 49 CFR 1135.1 and 1312.17(k), and shall be amended under the same timetable applicable to rate increases, to reflect declines in the cost index. Any declines in the index below the level in effect on December 31, 1985, will be addressed by postponing authorizations for future cost recovery rate increases pursuant to a "banking" procedure described more fully in Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*, served October 17, 1986.

(g) In accordance with the procedures outlined in §1312.17(k), each carrier shall timely file (either directly or through a duly authorized tariff-publishing agent) with the regulatory au-

thority of each State in which it operates, all tariffs filed with the Board in accordance with these procedures. The carrier will file with the State at the same time that it files with the Board.

[46 FR 22599, Apr. 20, 1981; 46 FR 51255, Oct. 19, 1981, as amended at 46 FR 55270, Nov. 9, 1981. Redesignated and amended at 47 FR 49576, Nov. 1, 1982; 50 FR 88, Jan. 2, 1985; 50 FR 37534, Sept. 16, 1985; 50 FR 43396, Oct. 25, 1985; 51 FR 37035, Oct. 17, 1986; 54 FR 12920, Mar. 29, 1989; 61 FR 7427, Feb. 28, 1996]

### PART 1137—PROCEDURES RELATING TO RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

Sec.

1137.1 Divisions of revenue cases.

1137.2 Expeditious procedures for publication of separate rates for distinct services.

AUTHORITY: 49 U.S.C. 721, 10705.

#### §1137.1 Divisions of revenue cases.

(a) *Notice of intent to file complaint.*

(1) An original and 10 copies shall be filed for Board use. Complainant shall serve copies of the notice upon each party (each receiver or trustee if a bankrupt line) to the joint rate.

(2) The notice of intent shall state generally: The involved traffic and applicable joint rates, the territorial scope, the participating railroads, and the present and proposed divisions.

(3) The notice shall include a statement indicating when filing of the formal complaint is expected. The formal complaint may not be filed more than one year after the filing of the notice of intent, unless the Board approves an extension of time. Lack of diligence in filing of the formal complaint may result in dismissal of the action.

(b) *Notice of intent to file cross complaint.* These notices shall be filed within 30 days from service of the original notice and are subject to the requirements in paragraph (a) of this section.

(c) *Formal complaint (and cross complaint).* The formal complaint (and cross complaint) shall be filed no sooner than 120 days after the filing of the notice of intent unless good cause is shown either for not filing a notice or for a shorter notice period. The request

to waive the notice time requirement may be included in the formal complaint or in a separate petition. The formal complaint (or cross complaint) shall contain the case-in-chief. All supporting papers shall be made available to opposing parties for inspection and copying. Complaints (and cross complaints) are subject to the same copy requirements as in paragraph (a) of this section. Complainant (or cross complainant) shall serve copies on each party of record. If circumstances permit, the cross complaint will be consolidated for disposition.

(d) *Answer.* The answer to the formal complaint shall contain the entire case-in-rebuttal. Supporting papers shall be made available to opposing parties for inspection and copying. If the notice of intent procedure was used, the case-in-rebuttal shall be filed within 30 days from service of the complaint. If the notice procedure is waived, the case-in-rebuttal shall be filed within 5 months of the filing of the complaint. Answers shall be served on each party of record. An original and 10 copies shall be submitted to the Board.

(e) *Further proceedings.* Following submission of defendant's evidence, complainant may, within 2 months, submit reply evidence which shall be served on each party of record. Unless otherwise ordered, no further filing shall be accepted. Divisions cases shall be handled under the modified procedure, unless oral hearing is shown to be necessary.

(f) *Discovery.* If the notice of intent procedure was used, discovery shall be available to all parties only prior to the filing of the complaint. If the notice procedure was not used, discovery shall be available to defendants only and must be exercised under the time restrictions contained in paragraph (d) of this section. Prehearing conferences may be requested to adjudicate discovery requests, or they may be resolved by written pleadings.

(g) *Evidentiary guidelines.* (1) Traffic and cost studies, either individual or joint, may be submitted. Studies shall be accepted for consideration as long as they do not delay the process or conflict with other applicable deadlines.

Cost studies should be developed, absent a more specific method, in accordance with Rail Form A (or URCS, if implemented), adjusted to reflect the specific traffic and updated to a current level. Studies may include the types of evidence discussed in appendix D of *Expedient Handling of Divisions of Revenue Cases*, 353 I.C.C. 349, 388 (1976).

(2) The following evidentiary standards apply:

(i) Costs associated with exempt or contract traffic shall not be included, except that allocation of certain common costs to regulated traffic may be acceptable if adequately explained.

(ii) Elements of profit, income tax, and passenger, commuter, and LCL deficits are not proper expense items for developing fully allocated cost [See *Rules to Govern Assembling and Presenting Cost Evidence*, 337 I.C.C. 298 (1970)], but will be treated under the issue of revenue need.

(iii) Passenger and commuter service costs shall be considered only in relation to the carrier's revenue need.

(iv) All subsidies shall be disclosed and explained.

(v) The same divisional basis shall apply on "border point" traffic.

(h) *Time periods for completion of proceedings.* In accordance with section 10705(f)(1)(A)(ii), a party, for good cause, may seek extension of any applicable filing deadline. If a requested extension will result in an evidentiary period in excess of 9 months and the proceeding does not involve Class III carriers, the request shall contain sufficient information to allow the required report to Congress and set forth the reasons why the extension is necessary. When the proceeding involves a railroad in reorganization or a contention that the divisions do not cover the variable costs of handling the traffic, requests for extension of filing deadlines shall be viewed with disfavor. The Act directs us to give these proceedings preference and to take final action at the earliest practicable time. 49 U.S.C. 10705(f)(1)(A)(i).

[48 FR 12105, Mar. 23, 1983, as amended at 53 FR 19302, May 27, 1988]